

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of	)	
	)	
<b>Cochise Broadcasting LLC</b>	)	
	)	
KUTQ(FM), La Verkin, UT	)	File Nos. BRH-20130603AFO and
	)	BALH-20150323ACK
	)	Facility ID No. 166049
	)	
KWYX(FM), Casper, WY	)	File No. BRH-20130603AUU
	)	Facility ID No. 166051
	)	
KGRK(FM), Glenrock, WY	)	File No. BRH-20130603BIE
	)	Facility ID No. 88725
	)	
KXJW(FM), North Rock Springs, WY	)	File No. BRH-20130603BIV
	)	Facility ID No. 171027
	)	
KZXQ(FM), Lake of the Woods, AZ	)	File No. BRH-20130603BIA
	)	Facility ID No. 78273
	)	
KWXR(FM), Reliance, WY	)	File No. BRH-20130603BHO
	)	Facility ID No. 171026
	)	
KTWY(FM), Shoshoni, WY	)	File No. BRH-20130603ATM
	)	Facility ID No. 166052
	)	
KWWY(FM), Shoshoni, WY	)	File No. BRH-20130603ATY
	)	Facility ID No. 166053
	)	
KZLM(FM), Lewiston, MT	)	File No. BLESTA-20160705ABW
	)	Facility ID No. 171025
	)	
<b>Cochise Media Licenses LLC</b>	)	
	)	
KCDC(FM), Loma, CO	)	File No. BRH-20121203BTN
	)	Facility ID No. 164124
	)	
KCYA(FM), Rolling Hills, WY	)	File No. BRH-20130603AUI
	)	Facility ID No. 166055
	)	
KRMK(FM), Las Vegas, NM	)	File No. BRH-20130603AFR
	)	Facility ID No. 171005
	)	
KXBK(FM), Taylor, AZ	)	File No. BRH-20130603AFJ
	)	Facility ID No. 171004

KXML(FM), Fairfield, ID	) File No. BRH-20130603BIM
	) Facility ID No. 164259
	)
KMXQ(FM), Socorro, NM	) File No. BRH-20130603BCF
	) Facility ID No. 72615
	)
KXWY(FM), Hudson, WY	) File No. BRH-20130603ATC
	) Facility ID No. 166054
	)
KFMR(FM), Ballard, UT	) File No. BRH-20130603BGE
	) Facility ID No. 164261
	)
KZNM(FM), Milan, NM	) File No. BRH-20130603AFL
	) Facility ID No. 183360
	)
KHSK(FM), Allen, NE	) File No. BRH-20130201BCC
	) Facility ID No. 164135
	)
<b>Cochise Community Radio Corp.</b>	)
	)
KDNM(FM), Reserve, NM	) File No. BRED-20130603AER
	) Facility ID No. 175526
	)
KSFQ(FM), Thatcher, AZ	) File No. BRED-20130603AEM
	) Facility ID No. 176391

## ORDER

**Adopted: May 25, 2017**

**Released: May 26, 2017**

By the Chief, Media Bureau:

### I. INTRODUCTION

1. We have before us the captioned license renewal applications (Renewal Applications), assignment of license application for KUTQ, La Verne, Utah (Assignment Application),<sup>1</sup> and application for special temporary authority filed by Cochise Broadcasting LLC, Cochise Media Licenses LLC and Cochise Media Licenses LLC (collectively, Cochise). For the reasons stated below, we will grant the captioned applications, subject to certain conditions under which (a) stations that are being retained by Cochise (Retained Stations)<sup>2</sup> will receive short-term renewal grants and promptly resume operation and remain in compliance with minimum operating schedule requirements,<sup>3</sup> and (b) stations that are not being

<sup>1</sup> KUTQ and all of the other stations addressed herein are full-service FM stations that use four-letter call signs. Accordingly, except in the caption of this Order, we will dispense with the "(FM)" parenthetical when identifying stations in this Order and attached Consent Decree.

<sup>2</sup> The Retained Stations are: KCDC; KWYX; KGRK; KCYA; KRMK; KXBK; KZXQ; KWXR; KXJW; KXML; and KMXQ. KUTQ will receive a short-term renewal and will be retained by Cochise pending consummation of the transaction specified in the Assignment Application.

<sup>3</sup> See 47 CFR §§ 73.1740 and 73.581.

retained by Cochise (Surrendered Stations)<sup>4</sup> will either be donated to non-profit organizations or the licenses will be surrendered for cancellation.

2. In this Order, we adopt the attached Consent Decree entered into by the Media Bureau (Bureau) and Cochise. The Consent Decree resolves issues related to long-term, chronic failures to operate the Retained Stations and the Surrendered Stations over the course of the stations' most recent license terms.

## II. BACKGROUND

3. A "silent station" is a radio or television station that is authorized to broadcast but is not doing so. Any station that remains silent for more than 30 days must obtain special temporary authority (STA) to remain silent.<sup>5</sup>

4. Section 312(g) of the Communications Act of 1934, as amended (Act), provides in relevant part:

If a broadcasting station fails to transmit broadcast signals for any consecutive 12-month period, then the station license granted for the operation of that broadcast station expires at the end of that period, notwithstanding any provision, term, or condition of the license to the contrary, except that the Commission may extend or reinstate such station license if the holder of the station license prevails in an administrative or judicial appeal, the applicable law changes, or for any other reason to promote equity and fairness.<sup>6</sup>

5. Section 312(g) has relieved the Commission from the need to conduct revocation proceedings, with their lengthy procedural requirements, including evidentiary hearings, for stations that remain silent for extended periods of time.<sup>7</sup> However, in response to Section 312(g), some licensees of silent stations have adopted a practice of resuming operation for a short period of time, in some cases as little as a day, before the one-year limit in Section 312(g) applies. The Cochise stations followed this pattern:<sup>8</sup>

Station	License Start Date	License End Date	License Term Operation	License Term Silence	Post License Term Operation <sup>9</sup>	Post License Term Silence
KXWY	8/5/2009	10/1/2013	9 days	4.1 years	2.8 years	.85 year
KTWY	7/13/2009	10/1/2013	10 days	4.2 years	2.8 years	.85 year

<sup>4</sup> The Surrendered Stations are: KXWY; KTWY; KWWY; KFMR; KZLM; KZNM; KHSK; KDNM; and KSFQ.

<sup>5</sup> See 47 CFR § 73.1740(a)(4). Similarly, a station that is operating with reduced power for more than 30 days must obtain an STA to do so. See 47 CFR § 73.1560(c).

<sup>6</sup> 47 U.S.C. § 312(g); see Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996), and Consolidated Appropriations Act, 1995, Pub. L. No. 108-447, 118 Stat. 2809 (2004); see also *Eagle Broad. Group, Ltd. v. FCC*, 563 F.3d 543, 545 (D.C. Cir. 2009) (*Eagle*).

<sup>7</sup> See *Eagle*, 563 F.3d at 545.

<sup>8</sup> KHSK is not listed here because it operated by technical STA for most of its license term and KZLM is not listed here because its license term started after October 1, 2013.

<sup>9</sup> As of the end of last month (April 30, 2017).



Station	License Start Date	License End Date	License Term Operation	License Term Silence	Post License Term Operation <sup>10</sup>	Post License Term Silence
KWWY	7/10/2009	10/1/2013	9 days	4.2 years	2.8 years	.85 year
KFMR	6/10/2008	10/1/2013	8 days	5.2 years	65 days	3 years
KZNM	3/14/2013	10/1/2013	0 days	201 days	2 days	3.6 years <sup>11</sup>
KDNM	12/8/2011	10/1/2013	1 day	2 years	3.4 years	66 days
KSFQ	1/15/2013	10/1/2013	0 days	260 days	3.3 years	105 days
KUTQ	6/23/2009	10/1/2013	1.3 years	3 years	3.7 years	0
KCDC	3/17/2009	4/1/2013	25 days	4 years	.6 year	3.3 years
KWYX	6/5/2009	10/1/2013	43 days	4.2 years	3.7 years	0
KGRK	10/8/2008	10/1/2013	91 days	4.7 years	3.7 years	0
KCYA	7/28/2009	10/1/2013	9 days	4.2 years	3.7 years	0
KRMK	7/20/2010	10/1/2013	4 days	3.2 years	1.8 years	1.8 years
KXBK	7/19/2012	10/1/2013	1 day	1.2 years	1.8 years	1.7 years
KZXQ	1/7/2008	10/1/2013	3.2 years	2.8 years	3 days	3.3 years
KWXR	6/30/2010	10/1/2013	1.8 years	2.4 years	.87 year	2.7 years
KXJW	7/26/2011	10/1/2013	3 days	2.2 years	.87 year	2.7 years
KXML	11/14/2008	10/1/2013	232 days	3.5 years	3 years	.6 year
KMXQ	3/26/2010	10/1/2013	1.7 years	1.9 years	3.3 years	85 days

6. These practices raise a question as to whether the licenses for such stations should be renewed pursuant to Section 309 of the Act, which governs our review of applications to issue or renew authorizations.<sup>12</sup> In 1996, Congress revised the Commission's license renewal process and standards for broadcast stations by adopting Section 309(k) of the Act.<sup>13</sup> Section 309(k)(1) of the Act provides that the Commission shall grant such a license renewal application if it finds, with respect to the applying station, that during the preceding license term: (a) the station has served the public interest, convenience, and necessity; (b) there have been no serious violations by the licensee of the Act or the Commission's rules (the Rules); and (c) there have been no other violations by the licensee of the Act or the Rules which,

<sup>10</sup> As of the end of last month (April 30, 2017). Section 307(c)(3) of the Act provides for the Commission to continue broadcast licenses in effect while the license renewal application is pending. 47 U.S.C. § 307(c)(3); *see Fox Television Stations, Inc.*, Memorandum Opinion and Order, 29 FCC Rcd 9564, 9571 n.40 (MB 2014) (*Fox*) (Commission considers the licensee's performance since the beginning of its most recent license term, but performance during the pendency of a renewal application is given less weight).

<sup>11</sup> Appears to have exceeded 12 months silence. The attached Consent Decree will resolve both the renewal proceeding and the Section 312(g) inquiry for this station.

<sup>12</sup> *See* 47 U.S.C. § 309.

<sup>13</sup> 47 U.S.C. § 309(k)(1); *see* Pub. L. No. 104-104, Sec. 204(a)(1).

taken together, would constitute a pattern of abuse. Section 309(k)(2) of the Act provides that if a station fails to meet the foregoing standard, the Commission may deny the application pursuant to Section 309(k)(3) or grant the application on appropriate terms and conditions, including a short-term renewal. Section 309(k)(3) of the Act provides that if the Commission determines, after notice and opportunity for an evidentiary hearing, that the licensee has failed to meet the standard of Section 309(k)(1) and that no mitigating factors justify the imposition of lesser sanctions, the Commission shall issue an order denying the license renewal application for the station.

7. In 2001, the Commission cautioned “all licensees that . . . a licensee will face a very heavy burden in demonstrating that it has served the public interest where it has remained silent for most or all of the prior license term.”<sup>14</sup> This warning in *Birach* borrowed from the court’s language in *Office of Communication of the United Church of Christ v. FCC (UCC)*,<sup>15</sup> where the court stated: “When past performance is in conflict with the public interest, a very heavy burden rests on the renewal applicant to show how a renewal can be reconciled with the public interest. Like public officials charged with a public trust, a renewal applicant . . . must literally ‘run on his record.’”<sup>16</sup> The *UCC* decision further stated: “A broadcaster seeks and is granted the free and exclusive use of a limited and valuable part of the public domain; when he accepts that franchise it is burdened by enforceable public obligations. . . . After nearly five decades of operation the broadcast industry does not seem to have grasped the simple fact that a broadcast license is a public trust subject to termination for breach of duty.”<sup>17</sup> Although *UCC* was decided long before Section 309(k) was adopted, these principles aptly describe the public interest standard codified there.

8. In *Birach*, the Commission acknowledged that the agency’s longstanding policy had been to encourage silent stations to resume broadcast operations. However, the Commission noted that Section 309(k)(1) applies a “backwards-looking standard” that does not give any weight to efforts to return a station to full-time operation in the future.<sup>18</sup> The Commission held that denial of the renewal application of the station in question in *Birach* would be fundamentally unfair because the Commission had not provided sufficient notice of the effect the Section 309(k)(1) standard would have on silent stations. However, the Commission stated that the station, which had been off the air for more than three and one-half years in total, “fell far short of the service commitment which most licensees fulfill to their communities of license on a daily basis.”<sup>19</sup>

9. The policy against allowing extended periods of silence or minimal operation by licensed stations is to ensure “that scarce broadcast spectrum does not lie fallow and unavailable to others capable of instituting and maintaining service to the public.”<sup>20</sup> Apart from its enforcement of Section 312(g) of the Act, the Commission has stressed its interest in promoting efficient use of radio broadcast spectrum

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<sup>14</sup> *Birach Broad. Corp.*, Memorandum Opinion and Order, 16 FCC Rcd 5015, 5020, para. 13 (2001) (*Birach*).

<sup>15</sup> 359 F.2d 994 (D.C. Cir. 1966).

<sup>16</sup> *Id.* at 1007.

<sup>17</sup> *Id.* at 1003.

<sup>18</sup> *Birach*, 16 FCC Rcd at 5020, para. 12 (“[C]onsideration of post-term developments is fundamentally at odds with this backwards-looking standard”). *But see Fox*, 29 FCC Rcd at 9571 n.40 (performance during pendency of license renewal application given some weight).

<sup>19</sup> *Id.* at 5021, para. 13.

<sup>20</sup> *Family Life Ministries, Inc.*, Letter Order, 23 FCC Rcd 15395, 15397 (MB 2008).



for the benefit of the listening public in several different contexts since the enactment of Section 312(g).<sup>21</sup> Applying the public interest standard in Section 309(k) as described above is consistent with these efforts.

### III. DISCUSSION

10. Although some of the Cochise stations did operate for meaningful periods during their past license terms, most of the stations operated so little that their public service record is essentially non-existent. Accordingly, we cannot make an affirmative Section 309(k)(1) determination with respect to these stations.

11. Section 309(k)(2)-(3) of the Act provide that in this situation, the Commission may deny a station's renewal application after an evidentiary hearing if it determines that the station did not satisfy the Section 309(k)(1) standard and that no mitigating factors justify the imposition of lesser sanctions. Alternatively, the Commission may grant the application on appropriate terms and conditions, including a short-term renewal.

12. In this case, conducting an evidentiary hearing to assess the public service records and relevant mitigating factors for the eleven Retained Stations and the ten Surrendered Stations would be a time-consuming process and a very significant administrative burden, for both Cochise and the Bureau. Instead, we are entering into the attached Consent Decree with the expectation that it will result in prompt and lasting resumption of service to the public by the Retained Stations and by those Surrendered Stations that are donated to non-profit organizations. To the extent any of the Surrendered Stations are not donated, but instead have their licenses surrendered for cancellation, this outcome may enable other stations to move or upgrade their facilities, for the benefit of the public.

13. If Cochise cannot find a donee for any of the Surrendered Stations, the Bureau intends to notify potentially interested Tribal Nations of the opportunity to acquire these licenses and related assets. The Bureau will cooperate with other offices in the Commission, particularly the Office of Native Affairs and Policy, to provide such notice. For purposes of expediting the initiation of vital radio services for the benefit of Tribal Nations, the Bureau will consider waivers of the Commission's FM minor modification rule<sup>22</sup> to enable donations of the Surrendered Stations to entities that would qualify for a Tribal Priority, for service at locations that would satisfy Tribal Priority requirements.<sup>23</sup>

14. The license renewal applications for the Retained Stations will remain pending until, for each station, the terms of the Consent Decree are satisfied to the extent of permitting a short-term grant in accordance with the Consent Decree. Alternatively, for any Retained Station, if the terms of the Consent Decree for a short-term license renewal are not satisfied, the license will be cancelled and the license renewal application will be dismissed in accordance with the terms of the Consent Decree.

15. The assignment of license application for KUTQ has been reviewed and is eligible for a grant. In accordance with the terms of the Consent Decree, the assignment of license application and

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<sup>21</sup> See *Policies to Promote Rural Radio Service and to Streamline Allotment and Assignment Procedures*, Third Report and Order, 26 FCC Rcd 17642, 17645, para. 7 (2011) (citing the Commission's "fundamental interest" in expediting new radio service and preventing "warehousing" of scarce spectrum); *1998 Biennial Regulatory Review – Streamlining of Mass Media Applications, Rules, and Processes*, Report and Order, 13 FCC Rcd 23056, 23093, para. 90 (1998), on reconsideration, 14 FCC Rcd 17525, 17539, para. 35 (1999); *Liberian Broad. of Dallas License LLC*, Letter Order, 25 FCC Rcd 4765, 4768 (MB 2010) ("continued warehousing of this spectrum by Susquehanna in the face of Liberman's long-standing competing demand is plainly contrary to the public interest"); *Great Lakes Community Broad., Inc.*, Memorandum Opinion and Order, 24 FCC Rcd 13487, 13489, para. 3 (MB 2009).

<sup>22</sup> See 47 CFR §73.3573(a)(1) and (b)(1).

<sup>23</sup> *Id.* at Note 5.

license renewal application for KUTQ will be granted if KUTQ remains in operation and Cochise satisfies its obligations with respect to the Surrendered Stations.

16. The license renewal applications for the Surrendered Stations will remain pending until, for each station, the terms of the Consent Decree are satisfied to the extent of the Bureau's receipt, review and grant of a long-form assignment of license application, in which event the license renewal application for such station will be granted concurrently in accordance with the Consent Decree. Alternatively, if the Bureau does not receive such a grantable long-form assignment of license application for any of the Surrendered Stations in accordance with the terms of the Consent Decree, Cochise will surrender such license or the Bureau will cancel the license and dismiss the license renewal application for that station.

17. IT IS ORDERED that, pursuant to Section 4(i) of the Communications Act of 1934, as amended,<sup>24</sup> and by the authority delegated by Sections 0.61 and 0.283 of the Commission's rules,<sup>25</sup> the Consent Decree attached hereto IS ADOPTED.

18. IT IS FURTHER ORDERED that copies of this Order shall be sent by First Class and Certified Mail, Return Receipt Requested, to Cochise Broadcasting LLC, Cochise Media Licenses LLC, and Cochise Community Radio Corporation, P.O. Box 11060, Jackson, WY 83002, and their counsel, Susan A. Marshall, Esq., Fletcher, Heald & Hildreth, 1300 N. 17<sup>th</sup> St., 11<sup>th</sup> Floor, Arlington, VA 22209.

FEDERAL COMMUNICATIONS COMMISSION

Michelle M. Carey  
Chief  
Media Bureau

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<sup>24</sup> 47 U.S.C. §§ 154(i).

<sup>25</sup> 47 CFR §§ 0.61, 0.283.



**CONSENT DECREE****I. INTRODUCTION**

1. This Consent Decree is entered into by and among the Bureau and Licensees, by their respective authorized representatives, and the Owners for the purpose of resolving certain issues related to pending applications filed by the Licensees.

**II. DEFINITIONS**

2. For the purposes of this Consent Decree, the following definitions shall apply:
- (a) "Act" means the Communications Act of 1934, as amended.<sup>1</sup>
  - (b) "Bureau" means the Media Bureau of the Federal Communications Commission.
  - (c) "Commission" or "FCC" means the Federal Communications Commission.
  - (d) "Communications Laws" means, collectively, the Act, the Rules, and the published and promulgated orders and decisions of the Commission to which each Commission licensee is subject by virtue of its being a Commission licensee.
  - (e) "Continued Operation Notice" means written notice to the Bureau, submitted as an amendment to a current pending license renewal application, stating that a Retained Station has complied with its Minimum Operating Schedule with its Licensed Facilities for a period of 30 consecutive days after the Effective Date or after a New Operation Notice. A copy of such notice shall be submitted by email to [peter.doyle@fcc.gov](mailto:peter.doyle@fcc.gov) and [james.bradshaw@fcc.gov](mailto:james.bradshaw@fcc.gov), together with the following information to help corroborate operation of the station for the period in question: (i) a copy of the station logs, as defined in the Rules; (ii) the relevant station's payroll records covering that period (appropriately redacted to preserve each employee's privacy), and (iii) a declaration under penalty of perjury from an Owner attesting to the accuracy of the records submitted (collectively "Station Documents").
  - (f) "Effective Date" means the date on which the Bureau releases the Order.
  - (g) "Execution Date" means the date on which this Consent Decree is executed by the last of the Parties to do so.
  - (h) "Force Majeure" means a catastrophic occurrence (such as fire, flood, tornado, lightning strike, power loss or surge, bona fide technical issues, or vandalism) after the Execution Date that is beyond the control of Licensees and the Owners and has caused a Retained Station's previously operable transmission facilities to become inoperable until repairs can be made.
  - (i) "Inspection Failure" means a verification of a Retained Station's on-air status by Commission personnel that shows that the station is not complying with its

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<sup>1</sup> 47 U.S.C. § 151 *et seq.*



Minimum Operating Schedule with its Licensed Facilities, provided that Licensees must first be given written notice of, and a reasonable opportunity to contest, the inspection results, and provided further that any failure to comply due to Force Majeure shall not be considered an Inspection Failure. Furthermore, only facts related to whether or not the station operated with its Licensed Facilities in accordance with its Minimum Operating Schedule are used to determine the station's compliance with this part and 2(e) above; any possible rule violations uncovered by Station Documents or a Station Compliance Certificate which are unrelated to the station's on-air status may be considered separately but will not be found to diminish the length of the actual on-air operation.

- (j) "KUTQ" means the following FM broadcast station, identified by call sign and Facility ID Number: KUTQ (166049).
- (k) "Licensed Facilities" means transmission facilities authorized by the Commission, including those authorized by license or by special temporary authority, or such minor variations from those facilities as are authorized by the Rules.
- (l) "Licensees" means Cochise Broadcasting LLC, Cochise Media Licenses LLC and Cochise Community Radio Corporation (collectively), "Licensee" means each or any of the Licensees (individually), "Licensee-CB" means Cochise Broadcasting LLC and "Licensee-CML" means Cochise Media Licenses LLC.
- (m) "Minimum Operating Schedule" means the minimum operating schedule for all commercial broadcast stations as set forth in Section 73.1740 of the Rules.
- (n) "New Operation Notice" means written notice to the Bureau, filed as an amendment to a license renewal application, with a copy submitted by email to [peter.doyle@fcc.gov](mailto:peter.doyle@fcc.gov) and [james.bradshaw@fcc.gov](mailto:james.bradshaw@fcc.gov), stating that a Retained Station initiated operation with its Licensed Facilities within 90 days of the Effective Date and has commenced complying with its Minimum Operating Schedule.
- (o) "Order" means the Order of the Bureau adopting this Consent Decree.
- (p) "Owners" means Ted Tucker and Jana Tucker, each of whom is an "Owner."
- (q) "Parties" means each of the Licensees, each of the Owners, and the Bureau, each of which is a "Party."
- (r) "Property Schedule" means the attached inventory of equipment for the Surrendered Stations that Licensees have agreed to donate to non-profit organizations that are approved by the Bureau as assignees of such Surrendered Stations.
- (s) "Retained Station(s)" means the following FM broadcast stations, identified by call signs and Facility ID Numbers: KCDC (164124); KWYX (166051); KGRK (88725); KCYA (166055); KRMK (171005); KXBK (171004); KZXQ (78273); KWXR (171026); KXJW (171027); KXML (164259); and KMXQ (72615)).
- (t) "Rules" means the Commission's rules, found in Title 47 of the Code of Federal Regulations.

- (u) “Short-term Renewal” means a license renewal for a period of one year, granted promptly after submission of the Continued Operation Notice, and conditioned upon: (a) compliance by the Licensees with the terms of this Consent Decree; (b) compliance by the station with its Minimum Operating Schedule with its Licensed Facilities during that license term, except for (i) non-compliance due to any event of Force Majeure, and/or (ii) non-compliance for other reasons for a cumulative period of no more than five days (120 hours); (c) a showing of such operational compliance in the station’s next license renewal application; and (d) corroboration, as set forth in 2(e) above, by a complete copy of the Station Documents for the Short-Term Renewal license term. The term of each such renewal shall commence as of the Effective Date for currently operating stations and the New Operation Notice date for currently silent stations.
- (v) “Silent Notice” means written notice to the Bureau, submitted by email to [peter.doyle@fcc.gov](mailto:peter.doyle@fcc.gov) and [james.bradshaw@fcc.gov](mailto:james.bradshaw@fcc.gov), and certified by a sworn declaration from an Owner in accordance with the Rules, either: (a) stating that a Retained Station that submitted a New Operation Notice to the Bureau has not complied with its Minimum Operating Schedule with its Licensed Facilities for one or more days within the first 30 days after providing such notice and explaining the reason(s) for such non-compliance, including any event of Force Majeure; or (b) stating that a Retained Station has not complied with its Minimum Operating Schedule with its Licensed Facilities for a cumulative period of five (5) or more days since receiving a Short-term Renewal and explaining the reason(s) for such non-compliance, including any event of Force Majeure.
- (w) “Surrendered Stations” means the following FM broadcast stations, as identified by calls signs and Facility ID numbers: KXWY (166054); KTWY (166052); KWWY (166053); KFMR (164261); KZLM (171025); KZNM (183360); KHSK (164135); KDNM (175526); and KSFQ (176391).

### III. BACKGROUND

3. Licensees’ Retained Stations and the Surrendered Stations all had extensive periods of silence as a percentage of their last license term. Although most of the relevant terms were well less than eight years long, Licensees have argued that underlying circumstances explain the silence, and the periods of silence were authorized pursuant to STA’s, the Bureau has concluded that the record of service to the public by these stations is too sporadic and irregular to support a finding that these stations served the public interest in the last license term.<sup>2</sup> Accordingly, absent a settlement, Licensees and the Bureau would face the prospect of costly and time-consuming administrative litigation over issues presented by Sections 309(k)(2) and 309(k)(3) of the Act.<sup>3</sup> In order to resolve these cases expeditiously and have all

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<sup>2</sup> See 47 U.S.C. § 309(k)(1).

<sup>3</sup> See 47 U.S.C. § 309(k)(2) (if a station fails to meet the standard for license renewal set forth in Section 309(k)(1), the Commission may deny the license renewal application in accordance with Section 309(k)(3), or grant such application on terms and conditions as are appropriate, including a short-term renewal); 47 U.S.C. §309(k)(3) (the Commission shall deny a license renewal application if, after notice and opportunity for a hearing, it determines that



silent stations promptly resume service to the public, Licensees and the Bureau have reached a settlement in which certain renewals will be granted with “appropriate conditions” as set forth herein in accordance with Section 309(k)(2) of the Act, provided that Licensees either divest a number of their stations (*i.e.*, the Surrendered Stations) to non-profit organizations or surrender their licenses. In the event Licensees do not promptly find such an organization to accept one or more of the Surrendered Stations, as set forth below, the authorization for each such station will be cancelled.

4. For the Retained Stations, as more particularly described below, Licensees are committing to return each to service promptly, if silent, and the Bureau will issue short-term renewals, with appropriate conditions if the deadline for resuming service is met and the stations remain on the air for 30 consecutive days after resuming service. If Licensees fail to meet those conditions for one or more of the Retained Stations, the authorization for each such station will be cancelled. In addition, the Short-term Renewal grants for the Retained Stations will include conditions requiring continued operation during the new license term as set forth herein, except where specified exceptions apply. The number of hours equal to the number of any lost days of operation due to an event of Force Majeure will simply be added to the then-relevant time period in which the silence occurred, whether the initial 30 days of operation or the Short-term Renewal term, and completion of such additional operation shall constitute compliance with such requirements.

#### IV. AGREEMENT

5. The Parties acknowledge that any proceeding that might result from the Bureau’s investigation of Licensees’ license renewal applications and related applications, together with possible Licensee petitions, appeals, and lawsuits, could be time-consuming and require substantial expenditure of public and private resources by each Party. In order to conserve such resources, resolve the matter, and enable prompt resumption of service to the public by the stations, the Parties are entering into this Consent Decree, in consideration of the mutual commitments made herein.

6. **Retained Stations.** The Parties agree to the following terms and conditions regarding the licenses of the Retained Stations:

(a) The Licensees agree that any Retained Station that is currently operating in accordance with its license (KWYX, KGRK, KCYA, KXML, KCDC and KMXQ) will file a Silent Notice if, at any time after the Effective Date, it fails to comply with its Minimum Operating Schedule with its Licensed Facilities. Unless the reason for such failure to comply is due to Force Majeure, each Licensee agrees to submit for cancellation the license of any Retained Station that submits, or is required to submit, a Silent Notice. In the event any Licensee submits a license for cancellation (or is required to submit such license for cancellation but fails to do so), or in the event of an Inspection Failure, the Bureau may cancel such station’s license. Alternatively, if any of those Retained Stations comply with the Minimum Operating Schedule with their Licensed Facilities for a period of 30 consecutive days after the Effective Date and in each such case there has not been an Inspection Failure, Licensees will submit a Continued Operation Notice for each such station. If Licensees have not breached their obligations under terms of this Consent Decree, the Bureau will promptly, within 30 days, issue a Short-term Renewal for each of those Retained Stations, provided that there are no other significant issues that would preclude such action.

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the licensee failed to meet the Section 309(k)(1) standard and that no mitigating factors justify the imposition of lesser sanctions).



(b) The Licensees agree that any Retained Station that is not currently operating in accordance with its license (KXBK, KZXQ, KWXR, KRMK, and KXJW) will begin operating in compliance with its Minimum Operating Schedule with its Licensed Facilities within 90 days of the Effective Date, in which case it will file a New Operation Notice for each such station. In the event any of such Retained Stations fails to begin such operation within 90 days of the Effective Date, each Licensee agrees to submit for cancellation the license for such station. After filing a New Operation Notice for any Retained Station, each Licensee will submit a Silent Notice if, at any time after the New Operation Notice, such station fails to comply with its Minimum Operating Schedule with its Licensed Facilities. Unless the reason for such failure to comply is due to Force Majeure, each Licensee agrees to submit for cancellation the license of any Retained Station that submits, or is required to submit, a Silent Notice. In the event any Licensee submits a license for cancellation (or is required to submit such license for cancellation but fails to do so), or in the event of an Inspection Failure, the Bureau may cancel such station's license. Alternatively, if any of those Retained Stations complies with its Minimum Operating Schedule with its Licensed Facilities for a period of 30 consecutive days after the New Operation Notice is filed and in each such case there has not been an Inspection Failure, Licensees will submit a Continued Operation Notice for each such station. If Licensees have not breached their obligations or the terms of this Consent Decree, the Bureau will promptly within 30 days issue a Short-term Renewal for each of those Retained Stations (provided that there are no other significant issues that would preclude such action).

(c) During the term of the Short-term Renewal, Licensees agree to submit a Silent Notice in the event any Retained Station that receives a Short-term Renewal fails to comply with its Minimum Operating Schedule with its Licensed Facilities for more than 10 days cumulatively since receiving its Short Term Renewal. Unless the reason for such failure to comply is Force Majeure, each Licensee agrees to submit for cancellation the license of any Retained Station that submits, or is required to submit, a Silent Notice. In the event any Licensee submits a license for cancellation (or is required to submit such license for cancellation but fails to do so), or in the event of an Inspection Failure, the Bureau may cancel such station's license. Alternatively, if any of the Retained Stations that receives a Short-term Renewal complies with its Minimum Operating Schedule with its Licensed Facilities during that license term (excluding (i) failures due to Force Majeure and (ii) failures that do not exceed 120 hours cumulatively, the Bureau will promptly process each such station's next license renewal application in accordance with the processes and standards generally applied by the Bureau to other radio stations in that station's state, and, if such application is granted, provide for a license term that returns such station to the normal license renewal application deadline for radio stations in that station's state without extraordinary conditions.

(d) Following the Effective Date, there is no restriction on (i) a Licensee's seeking consent to assignment of license or transfer of control, including but not limited to a *pro forma* assignment or transfer to a commercial or non-commercial entity, of any of the Retained Stations or (ii) the subsequent consummation of such assignment or transfer, including any proposed in pending assignment applications after Commission consent. Further, a Licensee may seek modification of a Retained Station's license or technical operational special temporary authorization (not silence) without restriction in accordance with the Commission's Rules. Following submission of Continued Operation Notice(s) for the station(s) that are included in such application(s), the Commission shall process them in accordance with generally applicable procedures.

7. **Surrendered Stations.** For each of the Surrendered Stations, Licensees will have an opportunity for a period of 120 days from the Effective Date to submit any applications on FCC Form 314 for consent to assignment of any of the licenses of the Surrendered Stations to any nonprofit



organizations in which neither of the Owners, nor any person related to, employed by, or in partnership or any other joint business activity with either or both of the Owners (or any entity controlled by either or both of the Owners), is an officer, director, trustee, member, partner, employee, or paid consultant. Licensees will endeavor to identify and contact Tribal Nations, Tribal entities, local groups or other non-profit entities to present the opportunity to accept donation(s) of one or more licenses of the Surrendered Stations, but there is no requirement that Licensees select any particular entity as a recipient or donate any particular number of licenses. If Licensees are unsuccessful in locating a proposed donee after 45 days from the Effective Date, the Bureau may directly contact and discuss the availability of any remaining Surrendered Stations with Tribal Nations, entities owned by Tribal Nations, and other non-profit entities, and such discussions shall include notification of the restrictions set forth herein. For Tribal entities and other entities, in circumstances where a change in transmitter site by a Surrendered Station would satisfy the Tribal Priority requirements set forth in Note 5 to 47 CFR § 73.3573 or other donations that would promote localism and diversity goals, the Bureau will entertain requests for waiver of its major change rule in that regulation to enable a Surrendered Station to provide vital communications services to Tribal lands or to other such local or diverse groups. Licensees agree to donate the license for each of the Surrendered Stations as well as the related equipment listed on the Property Schedule to the nonprofit organizations identified in the assignment of license applications, and Licensees and Owners agree not to claim any charitable deductions on their federal or state tax returns (including any IRS Form 8283 or Montana Department of Revenue Form 2) based on such donations. When the Bureau acts on each assignment application for one or more Surrendered Stations, it will also act on the license renewal applications for such stations. Any such Station's underlying allocation and license shall also be designated as NCE. Each recipient nonprofit organization must agree not to assign any donated license to any of Licensees, the Owners, or any organization in which either or both of the Owners, or any person related to, employed by, or compensated in any way by either or both of the Owners (or any entity controlled by either or both of the Owners), is an officer, director, trustee, member, partner, employee, consultant or advisor. Recipient nonprofit organizations must also agree not to assign the license of a Surrendered Station or transfer control of the licensee, with the exception of *pro forma* assignments and transfers, nor enter into a local sales/programming agreement with a commercial or non-tribal entity for a period of four (4) years after becoming the licensee. While seeking donees for the Surrendered Stations and then Bureau approval of proposed assignments of licenses for the Surrendered Stations, Licensees may keep such stations silent. Alternatively, Licensees may enter into time brokerage agreements to enable donees to return such stations to operation pending consummation of the proposed assignments. In the event Licensees fail to submit a timely assignment of license application for one or more of the Surrendered Stations, either because Licensees have not found a suitable donee willing to accept the license for one or more of the Surrendered Stations in the terms outlined above or for any other reasons, Licensees will submit the license for each such station to the Bureau for cancellation. If any Licensee defaults on such obligation, the Bureau may cancel each such license. Once Licensees have (i) filed any assignment application for any of the Surrendered Stations to a recipient as set forth above and/or (ii) surrendered for cancellation the licenses of any remaining Surrendered Stations, the obligations of the Licensees with regard to the Surrendered Stations will have been satisfied. While Licensee's obligations under this Section 7 may have been satisfied, should the FCC, in its sole discretion, elect not immediately to cancel any licenses surrendered by Licensee, then Licensee shall continue to cooperate with the FCC for an additional 120 days from such surrender, and will agree to seek consent to assignment of the license of such station to a potential Tribal or other entity donee/assignee that steps forward following



contacts from FCC staff. Any potential assignee under this Section 7 shall be solely responsible for (i) its own legal fees; (ii) engineering fees; and (iii) other technical expenses.

8. **KUTQ.** Licensee-CB agrees that KUTQ will continue to comply with its Minimum Operating Schedule with its Licensed Facilities, except for interruptions due to Force Majeure, while Licensees carry out their obligations set forth in Paragraph 7 above, and will submit a Silent Notice in the event KUTQ fails to comply with its Minimum Operating Schedule with its Licensed Facilities for any reason in this period of time. Within 30 days of the satisfaction of Licensees' obligations under Paragraph 7, unless Licensee-CB has submitted, or been required to submit, a Silent Notice or has had an Inspection Failure with respect to KUTQ, the Bureau will grant the pending license renewal application (File No. BRH-20130603AFO) for a period of two years from the grant date without conditions, as well as the pending assignment of license application (File No. BALH-20150323ACK) for KUTQ, provided that there are no other significant issues that would preclude such action. Following grant of the pending license renewal application and assignment application and no later than ten days after the date on which grant of the assignment application becomes a final order, unless finality is waived by the parties, Licensee-CB and Owners will consummate the proposed assignment of license for KUTQ unless a breach of contract by the proposed assignee occurs or an order by a court of competent jurisdiction prevents such consummation. In the event Licensee-CB submits, or is required to submit, a Silent Notice for KUTQ, or there is an Inspection Failure by KUTQ, and the reason for the Silent Notice or Inspection Failure is not Force Majeure, Licensee-CB will submit the KUTQ license for cancellation. The Bureau may cancel the KUTQ license if Licensee-CB is required to submit the KUTQ license for cancellation but fails to do so.

9. The Parties agree to be legally bound by the terms and conditions of this Consent Decree. Licensees and the Bureau each represent and warrant that its signatory is duly authorized to enter into this Consent Decree on its behalf. Licensees and Owners agree that the Bureau has jurisdiction over them and the matters contained in the Consent Decree.

10. The Parties agree and acknowledge that this Consent Decree shall constitute a final settlement among Licensee and the Bureau concerning the license renewal applications for the Retained Stations and the Surrendered Stations.

11. In the event that any of the Licensees or Owners fails to satisfy any of its obligations under this Consent Decree, the Bureau may take any administrative adjudication or enforcement action available pursuant to the Communications Laws or other federal laws with respect to the Retained Stations, the Surrendered Stations or the violation of this Consent Decree.

12. Licensees and Owners waive any and all rights they may have to seek administrative or judicial reconsideration, review, appeal, or stay, or to otherwise challenge the validity of this Consent Decree and the Order under the Communications Laws or other federal laws, provided the Order adopts the Consent Decree without change, addition or modification.

13. Licensees and Owners agree to waive any claims they may otherwise have under the Equal Access to Justice Act, 5 U.S.C. § 504 and 47 CFR § 1.1501 *et seq.*, relating to the matters discussed in this Consent Decree.

14. Licensees and Owners agree that if the Commission, or the United States on behalf of the Commission, brings a judicial action to enforce the terms of the Order adopting this Consent Decree, neither Licensees nor Owners will contest the validity of the Consent Decree or Order, and Licensees and



Owners will waive any statutory right to a trial *de novo* with respect to any matter upon which the Order is based (provided in each case that the Order is limited to adopting the Consent Decree without change, addition, or modification), and will consent to a judgment incorporating the terms of this Consent Decree.

15. Licensees, Owners and the Bureau agree that the effectiveness of this Consent Decree is expressly contingent upon issuance of the Order, provided the Order adopts the Consent Decree without change, addition or modification.

16. Licensees, Owners and the Bureau agree that, in the event that this Consent Decree is rendered invalid by any court of competent jurisdiction, it will become null and void and may not be used in any manner in any legal proceeding.

17. Licensees and each of the Owners irrevocably waive personal service of any summons, complaint or other process and irrevocably consent to service of process by mail at P.O. Box 11060, Jackson Hole, WY 83002.

18. This Consent Decree may be signed in counterparts and/or by telecopy and, when so executed, the counterparts, taken together, will constitute a legally binding and enforceable instrument whether executed by telecopy or by original signatures.

19. This Consent Decree embodies the entire agreement among the Parties and supersedes and any all prior discussions or agreements with regard to the subject matter hereof.

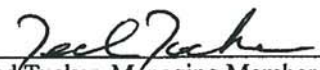
20. With respect to this Agreement, time is of the essence.

FEDERAL COMMUNICATIONS COMMISSION

  
Michelle M. Carey, ~~Acting~~ Chief  
Media Bureau

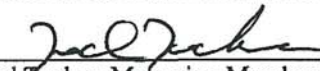
5-25-17  
Date

COCHISE BROADCASTING LLC

  
Ted Tucker, Managing Member

5-24-17  
Date

COCHISE MEDIA LICENSES LLC

  
Ted Tucker, Managing Member

5-24-17  
Date

COCHISE COMMUNITY RADIO CORP.

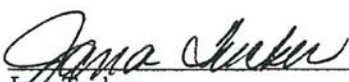
  
Ted Tucker, Director

5-24-17  
Date

OWNERS:

  
Ted Tucker

5-24-17  
Date

  
Jana Tucker

May 24, 2017  
Date



**PROPERTY SCHEDULE****OVERVIEW**

Cochise Broadcasting LLC, Cochise Media Licenses LLC, or Cochise Community Radio Corporation (collectively, "Cochise") plans to include the station's critical transmission equipment and other equipment owned by Cochise if a station is donated. This critical equipment would include the station's installed antenna and transmission line as well as a transmitter which would enable the station to operate with authorized power. These items represent the vast majority of the equipment expense for a station. Program origination equipment needs will vary greatly, depending upon the donee's individual circumstances, and therefore is not included in the list below. Nevertheless, if the donee is currently a non-broadcaster such as a tribal entity, local high school or college or other local organization, Cochise may provide, at its discretion, additional equipment. In addition, this list might be subject to revision based on any modification of a station's facilities associated with the donation or on a donee's particular needs. Also, equipment damage, failure, replacement or loss may modify the list. All equipment is 'as is' and "where is". The list below, however, reflects Cochise's current expectations with regard to the donation of equipment.

**STATION EQUIPMENT TO BE DONATED**

1. KXWY, Facility ID No. 166054, Hudson, Wyoming  
SCALA YA7CP-3 – antenna shared by KXWY/KTWY/KWWY  
Andrew LDF5-50A Heliac 100 Feet with DIN Connectors  
BEXT FR1000 Transmitter w Bext Exciter  
Equipment Rack shared by KXWY/KTWY/KWWY  
Miscellaneous Power and other cabling
2. KTWY, Facility ID No. 166052, Shoshoni, Wyoming  
SCALA YA7CP-3 – antenna shared by KXWY/KTWY/KWWY  
Andrew LDF5-50A Heliac 100Feet with DIN Connectors  
QEI 675T300 with Exciter  
Equipment Rack shared by KXWY/KTWY/KWWY  
Miscellaneous Power and other cabling
3. KWWY, Facility ID No. 166053, Shoshoni, Wyoming  
SCALA YA7CP-3 – antenna shared by KXWY/KTWY/KWWY  
Andrew LDF5-50A Heliac 100 Feet with DIN Connectors  
QEI675T300 with Exciter  
Equipment Rack shared by KXWY/KTWY/KWWY  
Miscellaneous Power and other cabling
4. KFMR, Facility ID No. 164261, Ballard, Utah

NOTE: Cochise acquired the equipment listed below for use by KFMR, and it has been used for KFMR operations. During periods when KFMR was not operating, the site landlord exchanged use of the equipment as a backup for rent and thus has acquired an interest in the equipment. Therefore, while the listed equipment is located at the KFMR site and has been used for that station, it is not currently available for donation.

NICOM BKG77-2

Andrew LDF5-50A Heliac 60 Feet with DIN Connectors

BEXT FM 2000 with Exciter

Equipment Rack

Miscellaneous Power and other cabling

5. KZLM, Facility ID No. 171025, Lewistown, Montana

SHIVELY 6812B-2

Andrew LDF4-50A Heliac 80 Feet with N Connectors

Miscellaneous Power and other cabling

NOTE: Other equipment, including a QEI 675T300 transmitter and an equipment rack are used in the operations of KZLM, but such equipment is rented from a third party and therefore cannot be donated.

6. KZNM, Facility ID No.183360, Milan, New Mexico

NOTE: Because the station was silent for over one year, it was dismantled. If and to the extent a donation of the station authorization were approved, Cochise would donate the following equipment with the donation of the authorization.

SHIVELY 6812B-1

Andrew LDF4-50A Heliac 70 Feet with N Connectors

QEI 675T500 with Exciter

Equipment Rack

Miscellaneous Power and other cabling

7. KHSK, Facility ID No. 164135, Allen, Nebraska

SHIVELY 6812B-1

Andrew LDF4-50A Heliac 50 Feet with N Connectors

FM Transmitter 300W with Exciter

Equipment Rack

Miscellaneous Power and other cabling

8. KDNM, Facility ID No.175526, Reserve, New Mexico

SHIVELY 6812-1

Andrew LDF4-50A Heliac 50 Feet with N Connectors

FM 250 W Transmitter with Bext Exciter

Equipment Rack

Miscellaneous Power and other cabling



9. KSFQ, Facility ID No. 176391, Thatcher, Arizona  
SHIVELY FMV-2  
Andrew LDF4-50A Helix 70 Feet with N Connectors  
CROWN FM300E TPO 0.295  
Equipment Rack  
Miscellaneous Power and other cabling